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Supreme Court of the United States.

No. 96.

FERDINAND M. JOPLIN, INDIVIDUALLY AND AS ADMINISTRATOR OF THE SUCCESSION OF BENNET JOPLIN, PLAINTIFF IN ERROR,

vs.

THEODORE C. CHACHERE, JOHN P. BOAGNI, AND VICTOR C. SITTING.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

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BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

Ferdinand M. Joplin, plaintiff in error, instituted a petitory action against defendants claiming to be owner of certain land in Acadia parish, Louisiana, described as section 41, T. 7 S. range 1 E, containing eight hundred and seventy and six hundredths acres of land, by purchase from James H. Houston, Jr., who purchased from the only surviving heir of Bennet Joplin, deceased. The deceased Bennet Joplin's private claim to said land was confirmed under act approved March 3rd, 1807, and predicated upon the treaty of the United States with France in the purchase of the Louisiana territory.

The plaintiff, by amendment of his petition, which was allowed, waived his individual claim to all but one tenth

of the land, and in the capacity of administrator of the succession of Bennet Joplin, sued for nine-tenths, for said succession, joining in the prayer to be recognized as owner of the other tenth.

On July 16th, 1900, the United States issued a patent confirming Bennet Joplin and his heirs' title to said land.

Joplin was a soldier in the War of the Revolution, and settled in Louisiana in 1806. He died many years before the issuance of said patent, and the assessment of said land by the State of Louisiana and the sale of said property for taxes in 1871.

The plaintiff in error bases his title on the patent. The defendant's title is based on a tax deed in 1871, from the tax collector, D. C. Sitting, to his son Victor C. Sitting, of St. Landry parish, of which the parish of Acadia was then a part, and the confirmation of the tax deed by the Auditor in 1874, and prescription. The questions presented are:

1st. Was there a divestiture of the title of the United States to said land prior to the issuance of the patent in 1900, so as to confer absolute ownership of the same in Joplin and his heirs, subjecting it to sale by the State.

2nd. Was the tax sale in 1871 an absolute nullity so that prescription could not be successfully pleaded as a defence?

1. It is conceded, private land claims based on title derived from the treaty with France in the purchase of Louisiana which had not ripened into complete grants before the cession of the territory of Louisiana, were segregated from the public domain and entered into private ownership, when the grant was confirmed by the Board of Commissioners, and confirmed by Act of Congress and identified by survey and approved by the Surveyor General. In such case the patent adds nothing to the title, and its issuance is a mere ministerial act.

Whitney vs. Morrow, 112 U. S. 693.

But in such a case the legislative confirmation must be by specific boundaries, distinguishing and separating it from other tracts and be capable of identification.

Whitney vs. Morrow, 112 U. S. 693.

The certificate issued by the Board of Commissioners described the land as located in the county of Opelousas, water course Mallet's Woods, acres 913.98. Arpents and hundredths in front 10.80. It was located on a water course on both sides of Bayou Mallet, and there is no such designation of it as to locate it at any particular part of the bayou, separating it from other lands on said bayou. No patent could have been issued under such a description. It was therefore necessary for a survey to be made and the land specifically described, and approved by the Surveyor General. It appears from the evidence that there was a survey made in 1856 by a deputy surveyor. This survey was not approved by the Surveyor General until Nineteen hundred. A letter from the Commissioner of the General Land Office to E. L. Wells, dated Friday, 17th, 1900, in answer to his inquiry why a patent had not been issued to Bennet Joplin, says:

> "I have the honor to advise you that it does not appear that the claim above described has ever been patented. I have further to advise you that the township plats show that the claim is in partial conflict with two other private claims, and it does not appear that the conflict has ever been adjudicated. Before patent will issue for a claim in conflict with others, it is necessary that the register and receiver adjudicate the conflict in accordance with the law. The claims are within the New Orleans District, and for informatoin as to the manner of adjudicating conflicts, you are referred to the Register and Receiver of that place."

Surveyor General James Lewis, in a letter to Mr. Wells, dated March 29, 1900, says:

> "I am in receipt of your letter of the 28th, inst., and in reply thereto will state that the case is now being investigated and as soon as the Honorable Register and Receiver render their decision in the matter of the Bennet Joplin private land claim, you will be promptly notified.
>
> "In this connection will state that such cases are often complicated and require time to make decisions. You may rest assured that this office has no intention to delay the matter or to evade answering your letters."

The conflict to be adjudicated was between the Joplin claim and the claim of John B. Staley and William Johnson, respectively, O. B. B. 1910, and O. B. B. 99. The adjudication of the Register and Receiver is in the record, and was offered in evidence by plaintiff in the trial court, and on objection by defendants, was ruled out. A bill was reserved to the ruling of the trial judge, and brought to the attention of the appellate court, but no ruling was made thereon. If offered to prove the fact of a conflict of the Joplin claim and the others mentioned, we are of the opinion that it ought to be received. This fact, however, is shown in the reasons given for the issuance of the patent, and it is further shown that it was not until the 9th day of May, 1900, that the survey of Deputy Phelps, of said land, was approved by the Surveyor General. The legal title to the Joplin claim was in the United States until patent issued in 1900, and the defendants can not avail themselves of the plea of prescription. The confirmatien to Joplin by Act of Congress was only as to quantity, and not to any specifically described tract of land. There was only an equitable interest in Joplin and his heirs until a survey should be made and approved by the Surveyor General,

segregating his part from the public domain, and from conflicting claims. The survey of 1856 was not approved until May 9th, 1900, when the Receiver and Register approved said survey, giving to Joplin and to conflicting claimants the tracts to which they were entitled under the confirmation. It was only then that the complete legal title was vested in Joplin and his heirs to the tract of land in controversy. It was only from this time that prescription commences.

Langdeau vs. Hanes, 21 Wallace 521.
Morrow vs. Whitney, 95 U. S. 551.

From the letter of the Commissioner to E. L. Wells, referred to, it will be observed that where there were conflicting claims, it was incumbent upon the Register and Receiver to adjudicate the same. It was not until this adjudication that any designated and specific tract of land was awarded or adjudicated to Joplin and his heirs. How then, could the assessor of the parish of St. Landry usurp the jurisdiction conferred by law upon the Register and Receiver and make an award to Joplin of a specific tract of land, settling the conflicting claims between him and others?

2nd. Tax title of defendants.

In the opinion of the Supreme Court of the State of Louisiana, it is stated that a tax deed can not be attacked collaterally. This is true as to any title or any deed. But there is a direct attack on the title of defendant in a petitory action. The plaintiff is not required to set out defendants' title and attack it. He attacks the title of defendant in his allegation of perfect and complete ownership, and the defendant is required to set out his title in defense. If, on its face, it is defective, and the cure of such defects can be supplied as in the case of tax titles by proof *aliunde,*

it is incumbent upon the defendant to show that the essentials for a tax title, the omission of which in the tax deed constitutes the defects, were really done and performed.

The tax deed from D. C. Sitting, Tax Collector, to Victor C. Sitting, recites that on the 30th day of December, 1871, he sold to said Sitting the Joplin land for State and Parish taxes due in 1871, for the price of Seventy-two dollars. The confirmation of the tax deed by the Auditor of Public Accounts on May 9th, 1874, recites that the land was sold "as per assessment roll of the State of Louisiana of the year 1870, to satisfy a debt due said State for the unpaid taxes of the year 1870."

By referring to Act 68 of the Extra Session of 1870, under which this assessment was made, it will be seen that taxes were assessed one year, and for that year when delinquent were sold the succeeding year commencing the 1st day of February. Sec. 56 of the Act, p. 140. Property, therefore, could not be assessed and sold in the same year, in which it was assessed. For this reason the tax deed is an absolute nullity.

Redfield vs. Parks, 132 U. S. 239.

The tax deed does not contain any recitals of the essentials of a tax sale under the Act 68 of the Extra Session of 1870. It failed to recite that notice had been served on the tax payer as required by Section 56 of the Act. The tax deed does not recite that the land of Joplin was sold in a judicial proceeding to enforce the payment of the taxes assessed.

Sec. 58 of the Act is as follows:

> "That in case of refusal or neglect of property owners to pay their taxes, the tax collector shall, after twenty days' written notice, in any city or corporate town, and thirty days' in any parish to the owner of the property assessed, his agent or attorney in fact,

> proceed according to law to obtain judgment, and to have seized and sold any property, real or personal rights or credits belonging to such defaulting tax payer, and all costs of such seizure and sale shall be borne by the party cast in the suit."

Under this act, as well as that of 42, of 1871, notice to the tax payer, and all essentials of a tax sale were required before there could be a valid sale of the property of the tax debtor. These essentials were required to be recited in the tax deed. The only recital as to the compliance with Act 68, of 1870, is that, "Know all men by these Presents, that by virtue of the power vested in me by law and strictly in accordance with all the legal proceedings in such cases, made and provided," etc. This was not a compliance with the law. The tax sale was therefore null and void on the face of the deed.

Rap vs. Lowry, 30th La. Annual 1272.
Lambert vs. Craig, 45th La. Annual 1110.

Chief Justice Marshall, in Thacher vs. Pervell, 6 Wheat. 119, said:

> "That no public officer can sell and convey a good title to the land of an other unless authorized to do so by express law, is one of those self-evident propositions to which the mind assents without hesitation; and that the person intrusted wth such power must pursue with precision the course prescribed by law, is a principle which has been repeatedly recognized by this Court."

The Tax Collector of St. Landry parish had no power to seize and sell without the intervention of judicial process, the property of Joplin, as the Act 68 Sec. 58, referred to requires the Tax Collector, after giving written notice of twenty days, to "proceed according to law to obtain judgment." The Tax Collector did not proceed to sell, or sell

under any judicial proceeding. There was no judgment obtained against the defaulting tax debtor, and he made a direct seizure ignoring the provisions of Sec. 58.

Bennet Joplin was a soldier during the War of the Revolution. He came to Louisiana in 1806, and died many years before the assessment of the property in his name. He was notoriously dead. Testimony of his grandson, Ferdinand Joplin, record, p. 39. The tax sale was therefore an absolute nullity. The assessment was not in the name of the owner as required by said Act of 1870.

Stafford, Ex., vs. Twitchell, 33rd La. Annual 520.

"It has been held that where the statute makes the deed prima facie evidence, that the requirements of the sale have been complied with, it does not disprove the purchaser from proof that the statutory conditions precedent have been complied with.

Robson vs. Osborn, 13th Texas 298.

Cooley on Taxation, 355.

So, where the statute made the deed *prima facie* evidence of the regularity of the sale. So, where the statute made the deed evidence of title in *fee simple.*

> "It is only where the statute makes the deed *prima facie* evidence, not only of the regularity of the sale, but of all prior proceedings and of the title of the purchaser, that it has been given effect to change wholly the burden of proof."
>
> *Stafford, Ex., vs. Twitchell,* 33rd La. Annual, p. 527

Sec. 59, of Act 68, of 1870, provides:

> "That tax collectors shall be and they are hereby authorized to give a title in the name of the State of Louisiana, to all persons purchasing property sold in pursuance of this Act, and such title shall be held and recognized by all Courts in this State as valid in law."

Under this section, a strict pursuance of the Act must be pursued to make the title prima facie. It is evident that the tax sale by the tax collector, was not made in pursuance of the act.

The Supreme Court of Louisiana, in the opinion of the Chief Justice, says:

> "Plaintiff is seeking to enforce a neglected and apparently an abandoned right. He could not proceed to enforce his right on the property until he obtained a legal title to it, which was the patent from the government. And this could not be issued until after the adjudication of the Register and Receiver heretofore referred to. The adjudication was made on 9th May, 1900, and the patent issued by the President 16th day of July, 1900. This suit was filed September 15th, 1900. This suit could only be maintained in the Federal Courts on the presentation of the legal title."
>
> *Gibson vs. Chouteau*, 13th Wallace 92.
> *Redfield vs. Parks*, 132 U. S. 239.

The defendants are not entitled to recover for taxes paid. The property was not properly on the assessment rolls, and could not be placed thereon until a patent issued to the plaintiff. The equitable interest of the plaintiff was not assessed, but the assessment was directly of the property. The costs of improvements are compensated by the defendants' use of the property, the crops raised and timbers cut.

S. D. McENERY,
Attorney for Plaintiff in Error.

GEO. S. DODDS,
MARK M. BOATNER,
of Counsel.

OPINION

Supreme Court of the United States.

No. 96.—October Term, 1903.

Ferdinand M. Joplin, Individually and as Administrator of the Succession of Bennet Joplin, Plaintiff in Error,
vs.
Theodore C. Chachere, John P. Boagni and Victor C. Sittig.

In error to the Supreme Court of the State of Louisiana.

[January 4, 1904.]

This action was brought in the Eighteenth Judicial District Court, parish of Acadia, State of Louisiana, by plaintiff in error to have himself declared the owner of a tract of land containing 870.06 acres, described as section 41, township 7 south, range 1 east. Subsequently he amended his petition and claimed one-tenth individually and nine-tenths as administrator of the succession of Bennet Joplin. He traced title in both capacities to Bennet Joplin, to whom the land was confirmed by the act of Congress, approved March 3, 1807, entitled "An act respecting claims of land in the Territory of Orleans and Louisiana." (2 Stat. 440.) This act was an amendment to the act of March 2, 1802, (2 Stat. 324,) which provided for ascertaining and adjusting the titles and claims to land within the same territory. The purpose of both acts was to recognize and establish the titles possessed by the inhabitants of that territory prior to its acquisition by the United States.

Section 4 of the act of 1807 provided:

"That the commissioners appointed or to be appointed for the purpose of ascertaining the rights of persons claiming lands in the Territories of Orleans and Louisiana shall have full powers to decide according to the laws and established usages and customs of the French and Spanish governments, upon all claims to lands within their respective districts, where the claim is made by any person or persons, or the legal representative of any person or persons who were on the 20th day of December, one thousand eight hundred and three, inhabitants of Louisiana, and for a tract not exceeding the quantity of acres contained in a league square, and which does not include either a lead mine or salt spring, which decision of the commissioners, when in favor of the claimant, shall be final against the United States, any act of Congress to the contrary notwithstanding."

A patent was issued July 16, 1900, in favor of Bennet Joplin, heirs and assigns. Stating the recitals of the patent and some other facts, the Supreme Court of Louisiana said:

"That it [the patent] was granted in accordance with the provisions of the act of Congress of the third of March, one thousand eight hundred and seven. It declares that there had been deposited in the General Land Office of the United States a patent certificate numbered fourteen hundred and ninety-nine, issued by the register and receiver of the United States Land Office, on the 25th of May, one thousand nine hundred, whereby it appeared that the private claim of Bennet Joplin, being numbered one thousand nine hundred and twenty-seven, class B, in the report of the old board of commissioners for the western district of the Territory of Orleans, was confirmed by the said commissioners under the authority conferred upon them by the act of Congress approved on the 3d of March, 1807, entitled 'An act respecting claims to land in the Territories of Orleans and Louisiana'; that the claim had been regularly surveyed and designated as section forty-nine in township seven, south of range one west, and section forty-one in township seven, south of range one east, of the Louisiana meridian, in the southwestern district of Louisiana, containing eight hundred and seventy acres and six hundreths of an acre, as appeared by a plat and descriptive notes on file (in the General Land Office) thereof, duly examined and approved by James Lewis, surveyor general for Louisiana, on the 9th day of May, one thousand nine hundred; that this plat and descriptive notes were inserted and made part of the patent.

"The plat and descriptive notes referred to were signed, as recited, by James Lewis, surveyor general of Louisiana, on the ninth of May, 1900.

"Immediately following the plat the surveyor general recites that it represents the survey of the private land claim of Bennet Joplin, confirmed by the old board of commissioners for the western district of Louisiana, in pursuance of the authority conferred upon them by the fourth section of the act of Congress approved March 3, 1807, entitled 'An act respecting claims to lands in the Territories of Orleans and Louisiana,' as appeared by their confirmation certificate No. B, 1927, dated March 11, 1802. After making this recital, the surveyor general says: 'The following being a description of the survey taken from the approved field notes of N. B. Phelps, deputy surveyor.' He then gives the field notes of the survey.

"At the end of the document, under date of May 9, 1900, are the words 'examined and approved,' followed by the signature of the surveyor general."

The defendants Chachere and Boagni depended for title upon purchases from Victor C. Sittig, by authentic acts duly recorded. Sittig purchased the same at tax sale in 1871. The defendants pleaded that Sittig and themselves had the uninterrupted, peaceable and actual possession of the land in good faith since 1871; had erected improvements thereon and paid taxes. They also pleaded the prescription of three, four, five, ten and twenty years. Victor Sittig was called in warranty and made the same defenses.

The District Court decreed that the claim of plaintiff be rejected, the plea of prescription set up by defendants be sustained, and they be quieted in their title and possession of the land. The Supreme Court of the State affirmed the decree, and the case was then brought here. Other facts are stated in the opinion.

Mr. Justice McKenna delivered the opinion of the Court.

The question presented is the effect of the defense of adverse possession and the plea of prescription. The contention of plaintiff in error is that such defense cannot avail against a United States patent. In other words, until the issue of the patent the title was in the United States and was unaffected by the occupation of the defendants.

Counsel say:

"The confirmation to Joplin by act of Congress was only as to quantity, and not to any specifically described tract of land. There was only an equitable interest in Joplin and his heirs until a survey should be made and approved by the surveyor general, segregating his part from the public domain, and from conflicting claims. The survey of 1856 was not approved until May 9, 1900, when the receiver and register approved said survey, giving to Joplin and to conflicting claimants the tracts to which they were entitled under the confirmation. It was only then that the complete legal title was vested in Joplin and his heirs to the tract of land in controversy. It was only from this time that prescription commences."

Is the contention of counsel justified? They cite *Langdeau* v. *Hanes*, (21 Wall. 521,) and *Morrow* v. *Whitney*, (95 U. S. 551.) To determine the application of those cases there are important facts to be considered. The Supreme Court of Louisiana said:

"We do not think there is any dispute between the parties as to the fact that, on the 12th of March, 1812, the board of commissioners appointed under section four of the act of Congress, approved March 3, 1807, confirmed to Bennet Joplin under certificate No. 1927, by virtue of occupancy and settlement under Joseph Chevalier Poiret, nine hundred and thirteen and ninety-eight hundredths acres of land in Bayou Mallet woods, in the county of Opelousas; that on April 29, 1816, Congress, reciting the various acts bearing upon the subject, (act of March 10, 1812, act of February 27, 1813, and act of April, 1814,) passed an act for the confirmation of certain land claims in the western district of the State of Louisiana, and that under section 4 of that act it was enacted 'that the claims marked "B," described in the reports of the commissioners for the western district of the State of Louisiana, formerly Territory of Orleans, and recommended by them for confirmation, be, and the same are hereby, confirmed;' that the claim of Bennet Joplin, covered by certificate No. 1927 of the board of commissioners, was confirmed in favor of Joplin by that act of Congress; that although the claim was so confirmed by act of Congress, no patent was issued for the land by the United States government until July, 1900."

In other words, the land claimed by Poiret was identified by his possession. It contained a definite quantity. Fractions of acres were even regarded, and almost necessarily. The right of a claimant depended upon possession, and naturally its extent was marked by definite boundaries. How else could a claim have any strength at all—any right to confirmation at all? The certificates issued by the commissioners were denomi-

nated grants, (sec. 7,) and they were required to designate a tract of land, (sec. 6.) Section 7, it is true, provided for a survey. The provision is "that the tracts of land thus granted by the commissioners shall be surveyed at the expense of the parties, under the direction of the surveyor general," in all cases where authenticated plats of the land, as surveyed by the French, Spanish and American governments, respectively, shall not have been filed with the proper register and recorder, or shall not appear on the public records of the territories. The surveying officer was required to transmit general and particular plats of land thus surveyed to the proper register and recorder and copies to the Secretary of the Treasury. The duties of the officers under the act may be summarized as follows: (1) The commissioners to investigate the claim, and if they confirmed it to issue a certificate thereof and transmit a transcript of their final decision to the Secretary of the Treasury. (2) The register and receiver, upon the filing of the certificate with him and a plat of the land being also filed with him by the surveyor general or officer acting as surveyor general, should issue a certificate, which, being transmitted to the Secretary of the Treasury, would entitle the party to a patent. (3) The survey of the land by the surveyor general or officer acting as such. (4) Reports by the Secretary of the Treasury to Congress "for their final determination hereon, in the manner and at the time heretofore prescribed by law for that purpose." There is no evidence that the register and receiver issued a certificate other than that mentioned in the patent. The commissioners performed the duties required of them and the Secretary of the Treasury performed his. And a survey was made of the land in 1856.

Under these facts did the title pass by the confirmation expressed in the act of Congress of April 29, 1816, (3 Stat. 328,) or, at the latest, upon the survey in 1856, or did it pass by the patent in July, 1900? For answer we may refer to the cases cited by the plaintiff in error.

In *Langdeau* v. *Hanes*, the contest was between a title claimed by virtue of the act of Congress, March 26, 1804, which confirmed claims to lands in the district of Vincennes, and a title claimed by adverse possession. It was provided by the act of Congress that a person to whom land is confirmed, whenever his claim shall have been located and surveyed, shall be entitled to the certificate from the register and receiver, which certificate shall entitle him to a patent. The tract in dispute was surveyed in 1820, but a patent was not issued until 1872. The defendant's claim of title rested on an adverse possession of thirty years. The State court held that the act of confirmation of 1807 was a present grant and became so far operative and complete as to convey the legal title when the land was located and surveyed by the United States in 1820; second, the patent was not of itself a grant of the land but only evidence of a grant; third, the adverse possession of the defendant was a bar to the recovery by the

plaintiff. Those propositions were affirmed by this court. The court held that the acts of Congress of 1804 was a recognition and discharge of the obligation, incurred by the government upon acquiring the territory from Virginia, to protect and confirm the possession and titles of the inhabitants to their property. And it was held that it was competent for Congress to provide how that it should be done, and Congress required a presentation of the claims to the register and receiver of the land office, constituted them commissioners to pass upon the claims "according to justice and equity," and to transmit to the Secretary of the Treasury a transcript of their decisions with his report. The Secretary of the Treasury submitted the decisions and the report to Congress, as he has required to do, and Congress passed the act of 1807 to confirm them. The court said:

"This confirmation was the fulfillment of the condition stipulated in the deed of cession so far as the claimants were concerned. It was an authoritative recognition by record of the ancient possession and title of their ancestor, and gave to them such assurance of the validity of that possession and title as would be always respected by the courts of the country. The subsequent clause of the act providing for the issue of a patent to the claimants, when their claim was located and surveyed, took nothing from the force of the confirmation.

"In the legislation of Congress a patent has a double operation. It is a conveyance by the government when the government has any interest to convey, but where it is issued upon the confirmation of a claim of a previously existing title it is documentary evidence, having the dignity of a record, of the existence of that title, or of such equities respecting the claim as justify its recognition and confirmation. The instrument is not the less efficacious as evidence of previously existing rights because it also embodies words of release or transfer from the government.

"In the present case the patent would have been of great value to the claimants as record evidence of the ancient possession and title of their ancestor and of the recognition and confirmation by the United States, and would have obviated in any controversies at law respecting the land the necessity of other proof, and would thus have been to them an instrument of quiet and security. But it would have added nothing to the force of confirmation. The survey required for the patent was only to secure certainty of description in the instrument, and to inform the government of the quantity reserved to private parties from the domain ceded by Virginia.

"The whole error of the plaintiff arises from his theory that the fee to the land in controversy passed to the United States by the cession from Virginia, and that a patent was essential to its transfer to the claimants, whereas, with respect to the lands covered by the possessions of the inhabitants and settlers mentioned in the deed of cession, the fee never passed to the United States, and if it had passed, and a mere equitable title had remained in the claimants after the cession, the confirmation by the act of 1807 would have operated as a release to them of the interest of the United States. A legislative confirmation of a claim to land is a recognition of the validity of such claim, and operates as effectually as a grant or quit-claim from the government."

This doctrine was repeated in *Whitney* v. *Morrow*, (95 U. S. 551.) The question arose upon the ruling of the trial court refusing to admit a patent of the United States in evidence. Sustaining the ruling, this court said:

"In this case, the patent would have been of great value to the claimant. It would have enabled him, without other proof, to maintain his title in the tribunals of the country. Founded as it would have been upon a survey by the government, it would have removed the doubt as to the boundaries of the tract, which always arises where their establishment rests in the uncertain recollection of witnesses as to ancient possession. It would thus have proved to its possessor an instrument of quiet and security, but it would not have added anything to the interest vested by the confirmation. (*Ryan et al.* v. *Carter et al.*, 93 U. S. 78.)"

These cases are not in conflict with *Gibson* v. *Chouteau*, (13 Wall. 93,) as was observed in *Langdeau* v. *Hanes*. The land in controversy had been part of the public lands of the United States. The title of Gibson was derived under the act of Congress of February 17, 1815, for the relief of the inhabitants of the county of New Madrid, in the Territory of Missouri, who had suffered by earthquakes. (3 Stat. 211.) James T. O'Carroll obtained permission from the Spanish authorities to settle on vacant lands in the district of New Madrid, in the Territory of Louisiana, and in pursuance of the permission he settled upon a tract embracing about 1,000 arpents of land, in that part of the country which afterwards comprised the county of New Madrid in the Territory of Missouri. The land settled upon, to the extent of 640 acres, was confirmed to O'Carroll by different acts of Congress. In 1812 the land was injured by an earthquake, and upon proof of the fact the recorder of land titles at St. Louis gave a certificate to that effect, which authorized the location of a like quantity on any of the public lands of the Territory of Missouri, a sale of which was authorized by law. Under this certificate the land in dispute was located. The land located had been previously surveyed, but for some cause the survey and plat were not returned to the recorder until August, 1841. The recorder then issued a patent certificate to "James T. O'Carroll or his legal representatives." The survey was not approved by the Commissioner of the General Land Office, because it did not show its interferences with conflicting claimants. A new survey and plat were made, showing interferences, and were filed with the recorder on the 26th of March, 1862, and a new patent certificate issued. In the following June the patent of the United States was issued to Mary McRee, who had acquired the interest of the locator by various mesne conveyances. In August following she conveyed to Gibson. Against the title thus acquired, among other defenses, adverse possession for the period prescribed by the statute of Missouri was pleaded. The plea was sustained. The judgment was reversed by this court.

It is obvious that there is a clear distinction between the case and *Langdeau* v. *Hanes* and *Whitney* v. *Morrow.* The act of 1815 did not confirm to O'Carroll the tract of land which he obtained from the Spanish authorities. It only enabled him or his representatives to locate a like quantity of the public land, and a segregation of that quantity and its exact identification were necessary, and this did not occur until the issue of the patent in 1862. The patent, therefore, was not the mere formal assurance of a title that had been conveyed by another government, but it was the conveyance of the title of this government after conditions performed, which authorized but did not anticipate it nor were they its equivalent. The case at bar, therefore, does not come under the precedent of *Gibson* v. *Chouteau;* it comes under that of *Langdeau* v. *Hanes* and *Whitney* v. *Morrow.*

Plaintiff in error claims under Joplin, who claimed under Poiret, who claimed under the French government. And it was the title to a tract of land thus claimed that the commissioners under the act of 1807 adjudicated and granted, and it was that title which was confirmed by the act of April 29, 1816.

What element then is wanting? Plaintiff in error says the identification of the land, its complete definition by boundaries, and until this was done the title was in the United States. We need not dispute the principle upon which the contention rests. We think its conditions were satisfied. Poiret's title was obtained by occupation and the right of his successor Joplin depended upon that, and by that the award of the commissioners could only have been measured. It is not conceivable that the boundaries of the tract were not ascertained by them. Their certificate, as was seen, expressed an exact quantity, 918.98 acres, and having a frontage of 1,080 arpents. The evidence before the commissioners is not exhibited, but there was a survey in 1856. The remarks of the Supreme Court of Louisiana are, therefore, apposite:

"It is evident that Poiret was shown to the board to have already occupied and settled a particular body—land for the time stated and to have already had an existing right or privilege to a particular tract. The identity of the tract confirmed must have been fixed by evidence before the board, and the survey which followed was unquestionably based upon that evidence, preserved and made known to the surveyor. The Joplin claim under Poiret was not based upon the survey, but the survey was based upon the existing claim, and simply identified the land to which Poiret and Joplin were entitled by antecedent occupancy and settlement."

Speaking of the survey, the court said:

"If, however, a survey of the claim was necessary in order to complete the transfer of ownership of this property to Joplin, we are satisfied that a survey of the same was made and approved by the surveyor general, W. J. McCulloh, as far back as 1856. The present surveyor general of Louisiana refers to the survey and field notes of Phelps as having been

approved, but not as a matter of original approval by himself, as the plaintiff seems to contend. In the act of sale of this land under which the plaintiff claims from James W. Joplin to James H. Houston, Jr., the land transferred is referred to as a 'Spanish grant' with the added words (see parish map and a list of private land claims, where the above described property is well defined as belonging to Bennet Joplin). We have before us a copy of the parish map here referred to, with the different private claims (among others that of Bennet Joplin) distinctly set out, and the surveys on which were located minutely detailed, certified to as far back as 1856 by the surveyor general. It may be that is not strictly and technically in evidence, but it is before us by reference in one of the acts, and were we not to act upon it the only effect would be to remand uselessly the case in order to have it formally introduced."

Bennet Joplin, it was testified, died before the assessment was made upon which the tax sale upon which the title of the defendants in error depended, and the validity of the assessment, therefore, is denied, because it was not made in the name of the owner, as required by the statute of the State of 1870. The assessment is also attacked for non-conformity with the statutes in other particulars. In passing on the questions thus raised the Supreme Court of Louisiana construed the statutes of the State differently from plaintiff in error, and answered all the questions on grounds not Federal, and which, therefore, we need not discuss.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.